

**HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
July 16, 2009**

Members Present

Bill O'Brien, Chairman
John Gebhart
Jack Lessard (Alternate)
Vic Lessard
Bryan Provencal

Others Present

Kevin Schultz, Building Inspector
Joan Rice, Secretary

Chairman O'Brien called the meeting to order at 7:00 p.m.

Chairman O'Brien introduced the members of the Board.

The Pledge of Allegiance was said.

PETITION SESSION

14-09 The petition of James Monagle, Margaret Carlman & Christine Parks, Trustees of The STM Trust for property located at 4 Chase Street seeking relief from Articles 4.1.1, 4.2 (including Footnote 22), 4.5.3, 6.1 and 6.3.1 to replace an old existing nonconforming building with no on-site parking with a smaller and more conforming one with on-site parking the frontage for which is on a private street. This property is located at Map 274, Lot 57 in a BS zone.

Attorney Peter Saari, Cassasa & Ryan, came forward. He said that when this petition was before the board previously there was a discussion of making alterations to the plan in order to make it more conforming. The new plan accomplishes that, but is still a little short. There are more parking spaces and the steps are now in the back. The stairway has been narrowed to 3 feet. The front steps have also been moved sideways. Attorney Saari said they will go before the Conservation Commission with this plan, if approved, on July 28th.

Questions from the Board

Chairman O'Brien said that under Criteria #3 of the petition it states that the new structure conforms to all setback requirements. He pointed out that a variance is still needed for the rear (4.5.3) and that the applicant has applied for this relief.

Chairman O'Brien asked if any sheds would be placed in the parking spaces. Attorney Saari said no sheds would be placed in the parking spaces and that the utility room would serve as a shed.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Mr. Vic Lessard said he would like to go with the new plan as it is much better than what was submitted previously.

Moved by Mr. Vic Lessard and seconded by Mr. Jack Lessard, to grant Petition 14-09 contingent upon approval of the Conservation Commission and any other necessary boards.

Chairman O'Brien asked the Board if they felt the five criteria had been met. The members agreed that they had.

VOTE: 5-0-0. Motion passed unanimously.

15-09 WITHDRAWN

16-09 The petition of John & Louise Bernhardt for property located at 172 North Shore Road seeking relief from Articles 1.3 and 4.5.2 to enclose existing deck which does not meet side setback. This property is located at Map 133, Lot 26 in a RA zone.

John and Louise Bernhardt came forward. Ms. Bernhardt said they are requesting approval to enclose an existing deck, allowing it to fall under the same side setback of 7 feet that existed in 1998. Ms. Bernhardt went through the five criteria and said she felt they had been met.

Questions from the Board

Mr. Vic Lessard said he saw no problem with this and the neighbors are not opposed.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. Jack Lessard and seconded by Mr. Provencal, to grant Petition 16-09.

Chairman O'Brien asked the Board if they felt the five criteria had been met. The members agreed that they had.

VOTE: 5-0-0. Motion passed unanimously.

17-09 The petition of Elmwood Corners Hampton LLC for property located at 2252 Winnacunnet Road seeking relief from Articles 4.2, footnote 22 to 4.2 and 4.3 as to Lot #2 to allow for subdivision of Map 205, Lot 17 (Elmwood Inn) to create a 20,003 square foot lot, on which the existing lodging house shall continue to operate unchanged, and a single family residential lot of 15,071 square feet. This property is located at Map 230, Lot 15 in a RA zone.

At this time Mr. Vic Lessard asked to step down.

Attorney Stephen Ells and Walter Davis came forward. Chairman O'Brien asked the Petitioners if they desired to continue the hearing with only four board members. Attorney Stephen Ells consulted with Mr. Davis and then stated they wanted to proceed with just four board members present.

Attorney Ells said the petitioner was seeking relief to subdivide this property and create a single family residence on the lot to the rear. He said Mr. Davis started this process in 2004 by filing with this board. The Town objected and asked the Zoning Board not to approve until questions regarding the title were resolved by the Court. Mr. Davis then withdrew his petition.

Attorney Ells also stated that during the litigation process Mr. Davis came to the Zoning Board to seek variances in February of 2008. The Board felt that access from Winnacunnet Road was not sufficient and the petition was denied. Attorney Ells discussed the difference between previous petitions and the present one. Before, both lots were non-conforming in size and in this petition they are conforming in size. Attorney Ells believed that this petition was substantially different from the prior proposal.

Questions from the Board

Chairman O'Brien asked about the court case. Attorney Ells said Mr. Davis has been found to be the owner of the parcel of land in question; and the Town is the owner of the sidewalk. The petitioner has agreed that he would again try to pursue this

through the Board process and if successful, the litigation would be over. Attorney Ells then presented a map and an explanation of the sidewalk area, the two proposed lots, the two parcels of land to be conveyed, etc.

Chairman O'Brien then polled the members of the Board as to this plan being substantially different from the prior petition; the members agreed that this plan was substantially different.

Attorney Ells said the petitioner is asking for relief to create this single family lot where there is only 37 feet of frontage where 125 feet is required. The lot width would also not be met since 125 feet is required.

Attorney Ells said under this new proposal Parcel B, including the sidewalk, and a utilities easement will belong to the Town. There is also a proposed snow storage area which has been suggested by the Department of Public Works

Attorney Ells went through the five criteria and said he felt they had been met.

Questions from the Board

Chairman O'Brien asked about the dotted line above Leavitt Road on the drawing. Attorney Ells said this shows the right of way for Leavitt Road.

Comments from the Audience

John Kamash, 94 Leavitt Road, came forward. He said he had lived in his house for 20 years. At the beginning there were only two houses on the narrow end of the road. Since the Leno's house went in the narrow road is very congested. Mr. Kamash expressed concern about public safety access if another home was added. He said he also felt that snow removal was another issue.

Brian Leno, 96 Leavitt Road, came forward. He said he is a direct abutter of this property. Mr. Leno submitted a petition signed by 18 residents of Leavitt Road who request the petition be denied. Mr. Leno then proceeded to read a 3 page letter he had submitted to the Zoning Board that presented, in detail, all of his concerns.

Back to the Board

Attorney Ells said that Mr. Leno's house came into existence as a result of a frontage variance. He has only 45 feet of frontage. This is exactly the same thing the

petitioner is asking for. As far as safety issues go, those are Planning Board issues. Attorney Ells said he felt there would be no problem with access.

Mr. Gebhart said it appeared that there would be three driveways at the end of this narrow road which are extremely close together. Mr. Gebhart asked if it would be possible to expand Leavitt Road and make it a true cul-de-sac. Attorney Ells said that has not been discussed.

Mr. Jack Lessard asked Mr. Davis if he would live in the house. Mr. Davis said he would. Mr. Jack Lessard said he felt this would be very congested.

Chairman O'Brien said he has always taken the position of being against waivers that subdivide a lot to create a backyard pork chop lot which does not satisfy the 75% square rule of Footnote 22 without adequate justification, and he would take that position in this case.

Moved by Mr. Jack Lessard and seconded by Mr. Gebhart, to deny Petition 17-09.

Chairman O'Brien asked the Board members, individually, if they felt the five criteria had been met. All members with the exception of Mr. Provencal said they had not.

VOTE: 3-1 (Provencal)-0. Motion to deny passed.

18-09 The petition of Russell & Rhonda Bernstein for property located at 12 Tide Mill Road seeking relief from Articles 1.3 and 4.5.2 to replace existing garage with expanded garage attached on the second story. This property is located at Map 230, Lot 15 in a RA zone.

Russell Bernstein came forward. He said they are seeking relief from the 15 foot setback requirement. The existing garage is deteriorating and is non-conforming. They want to replace it with an expanded garage attached on the second story that would only be one foot closer to the property line (9 feet versus 10 feet). Mr. Bernstein went through the five criteria and said he felt they had been met.

Questions from the Board

There were no questions from the Board.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Mr. Gebhart read a letter from Robert and Mona Jackson stating they are opposed to the granting of this petition.

Chairman O'Brien asked if the garage, rather than coming forward, could be moved backwards. Mr. Bernstein replied that they want to have access from the main house.

Moved by Mr. Provencal and seconded by Mr. Jack Lessard, to grant Petition 18-09.

Chairman O'Brien asked the Board if they felt the five criteria had been met. The members agreed that they had.

VOTE: 5-0-0. Motion passed unanimously.

19-09 The petition of Terrence Griffin, through Colleen Hancock, for property located at 173 Kings Highway seeking relief from Articles 1.3, 4.5.3 and 4.5.2 to build a deck that does not meet side or rear setbacks. This property is located at Map 127, Lot 44 in a RA zone.

Terrence Griffin and Colleen Hancock came forward. Ms. Hancock explained that they would like to build this deck primarily for safety purposes. Ms. Hancock went through the five criteria and said she felt they had been met.

Questions from the Board

Chairman O'Brien asked what the size of the proposed deck would be. Ms. Hancock replied that it would be 17' x 15' and would be an "L" shaped deck. Chairman O'Brien stated that those dimensions do not correspond to the East and South elevation plans they submitted. Chairman O'Brien asked what the total square footage of the deck would be. Ms. Hancock said it would be approximately 150 square feet.

Chairman O'Brien said a deck could be built on the north side using the door shown in the North elevation plan. Mr. Griffin said that the door has been eliminated since the photo was taken and that most people build decks on the south side because of access to the sun. It is also a better view. Chairman O'Brien reminded the Board that this petition for setback relief was justified on the issue of safety only. Chairman O'Brien said he was against this because it is an over intensification of the South-East corner of the lot, and that a staircase, for safety purposes could be built without setback relief.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Mr. Vic Lessard said he would like to see the petitioners come back with another plan.

Mr. Schultz said the Board could say they didn't want any more than a 5-foot encroachment and then request that an "as built" be done, this could be approved. The other option would be to come back at another meeting with a new plan.

Moved by Mr. Vic Lessard and seconded by Mr. Provencal, to grant Petition 19-09 with the conditions that no relief is granted to the South side and the deck must be no closer than 5 feet to the property line on the East side.

Chairman O'Brien asked the Board if they felt the five criteria had been met. The members agreed that they had.

VOTE: 5-0-0. Motion passed unanimously.

BUSINESS SESSION

Adoption of Minutes

Moved by Mr. Vic Lessard and seconded by Mr. Provencal, to approve the Minutes of June 18, 2009.

VOTE: 4-0-1 (J. Lessard). Motion passed.

Petition 05-09

Chairman O'Brien said that Attorney Saari has submitted a corrected application for the Witch Island Condominium Association (Petition 05-09) that satisfied a condition imposed when the petition was approved. Chairman O'Brien said he was satisfied with the rewrite and asked for a motion to approve the corrected application.

Moved by Mr. Provencal and seconded by Mr. Gebhart, to approve the corrected application for Petition 05-09.

VOTE: 3-0-2 (J. Lessard, V. Lessard). Motion passed.

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Adjournment

There being no further business to come before the meeting, Mr. Provencal **moved** and Mr. Gebhart seconded, that the meeting be adjourned. The motion passed by unanimous vote.

The meeting was adjourned at 9:42 p.m.

Respectfully submitted,

Joan Rice